

Total Maximum Daily Load (TMDL) Program



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[Notices]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-5929-4]

National Advisory Council for Environmental Policy and Technology--Total Maximum Daily Load Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDLs and water related issues.

DATES: The three day public meeting will be held on January 21-23, 1998, in Salt Lake City, Utah. The full Committee meeting is scheduled to begin Wednesday, January 21, 1998, at 8:30 a.m and conclude at 5:30 p.m., and will be held at the Jewish Community Center, #2 Medical Drive, Salt Lake City, Utah. The meeting will reconvene at 8:30 a.m. on Thursday, January 22, 1998, at the Jewish Community Center and is scheduled to adjourn at 3:00 p.m. On Friday, January 23, 1998, the Committee will meet at the University Park Hotel and Suites, 480 Wakara Way, Salt Lake City, Utah, beginning at 8:30 a.m. and is scheduled to conclude at 4:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting and will both be held at the Jewish Community Center. The first will occur on Wednesday,

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January 21, 1998, from 7:30 p.m. until 9 p.m. The second will occur on Thursday, January 22, 1998, from 3:30 p.m. until 5:00 p.m.

FUTURE MEETING DATES: The Committee has one remaining meeting scheduled on May 4-6, 1998, in Atlanta, Georgia.

ADDRESSES: Materials or written comments may be transmitted to the Committee through Hazel Groman, Designated Federal Officer, NACEPT/ TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Hazel Groman, Designated Federal Officer for the Total Maximum Daily Load Committee, at 202-260-8798.

Dated: November 20, 1997.

Hazel Groman,

Designated Federal Officer.

[FR Doc. 97-31279 Filed 11-26-97; 8:45 am]

BILLING CODE 6560-50-P

Total Maximum Daily Load (TMDL) Program

AGENDA **MEETING OF FEDERAL ADVISORY COMMITTEE ON TMDLS**

SALT LAKE CITY, JANUARY 21-23, 1998

Background

- This is the fifth of six meetings of the Federal Advisory Committee on the Total Maximum Daily Load (TMDL) Program. The final meeting is scheduled for May 4 through May 6 in Atlanta, GA. On May 6, the Committee plans to present its recommendations for strengthening the TMDL program to the Deputy Administrator and Assistant Administrator for Water of the United States Environmental Protection Agency (EPA).
- On December 15, 1997, the Committee's facilitators distributed a draft report to the members for their review and comment. Based on comments received, revisions were made and a new version distributed to members on January 15, 1998. The January 15 draft report will be used by members in their discussions at the meeting in Salt Lake City. (Copies of the January 15 draft will be available to the public at the meeting.)
- The draft report includes a number of placeholders for unresolved issues. Other significant issues have been raised in member comments. The focus of this meeting will be on resolving these outstanding issues.

Meeting Approach

- The meeting will begin on Wednesday, January 21 at the Jewish Community Center (#2 Medical Drive), with Committee review and possible modification of this agenda, followed by a brief update from the U.S. Environmental Protection Agency on recent developments related to the TMDL program.
- Also on Wednesday morning, the Committee will decide whether and how to revise its definition of "consensus" and agree on whether/how to deal with divergent views in the Committee's report.
- Next, the Committee will review and may revise a list of remaining outstanding issues. The Committee will then categorize/rank those issues. It is expected that a set of roughly 20 substantive issues, along with a number of procedural issues, will be identified for Committee action at this meeting.
- The remainder of the meeting will be focused on resolving the outstanding issues. The Committee may assign small groups to certain issues to frame them for

Committee decision. However, most of the meeting is expected to be conducted in plenary session.

- On Friday afternoon, the Committee will decide how to address any significant remaining outstanding issues and review the process for completing the Committee's work and presenting recommendations to EPA officials on May 6, 1998 in Atlanta.
- Public comment sessions will be held beginning at 7:30PM on Wednesday, January 21 at the Jewish Community Center, and at 3:30 PM on Thursday, January 22. If time allows, other opportunities for public participation will be offered. The Committee meeting will be open to the public.
- On Wednesday and Thursday, the meeting will be held at the Jewish Community Center, #2 Medical Drive. On Friday, the meeting will be held at the University Park Hotel and Suites, 480 Wakara Way.
- Committee members may order lunch to be brought in to the meeting site on Wednesday and Thursday for their convenience; however, no working lunches are currently scheduled. On Thursday evening, Committee members will be invited to share dinner together at a local restaurant.

FEDERAL ADVISORY COMMITTEE ON TMDLs

Proposed Agenda for 5th Meeting
January 21-23, 1998
Jewish Community Center and University Park Hotel and Suites
Salt Lake City, UT

Wednesday, January 21, 1998 (JCC)

8:30 AM Welcome; Logistics Review; Agenda Review

9:00 AM EPA Update

9:30 AM **Adoption of Consensus Definition and Divergent Views Approach**

10:30 AM Break

10:45 AM **Ranking of Outstanding Issues List**

12:00 PM Lunch (on your own; pre-ordered lunches will be available to Committee members)

1:00 PM **Action on Outstanding Issues**

3:00 PM Break

3:30 PM **Action on Outstanding Issues, *continued***

5:30 PM Dinner (on your own)

7:30 PM Public Comment Session

Thursday, January 22, 1998 (JCC)

8:30 AM **Action on Outstanding Issues, *continued***

10:15 AM Break

10:30 AM **Action on Outstanding Issues, *continued***

12:00 PM Lunch (on your own - pre-ordered lunches will be available to Committee members)

1:00 PM **Action on Outstanding Issues, *continued***

3:00 PM Break

3:30 PM Public Comment Session

7:00 PM Group Dinner for Committee members

Friday, January 23, 1998 (University Park Hotel and Suites)

8:30 AM **Action on Outstanding Issues, *continued***

10:00 AM Break

10:15 AM **Action on Outstanding Issues, *continued***

12:00 PM Lunch (on your own; pre-ordered lunches will be available to Committee members)

1:00 PM **Plan for Resolving Any Remaining Outstanding Actions Prior to the Atlanta Meeting on May 4 - 6**

2:30 PM Break

3:00 PM **Wrap-up and next steps**

Total Maximum Daily Load (TMDL) Program



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Federal Advisory Committee on Total Maximum Daily Loads (TMDLs)

Summary of Meeting Five

**January 21-23, 1998
Salt Lake City, Utah**

Note: This summary of the fifth meeting of the Federal Advisory Committee on Total Maximum Daily Loads was reviewed and approved by the full Committee at the May 4-6, 1998 meeting in Atlanta, Georgia. . . .

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Meeting Overview:

This meeting summary describes the discussions and actions that occurred at the fifth meeting of the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs), held January 21-23, 1998 in Salt Lake City, Utah. The following were the primary outcomes of the meeting:

- The Committee adopted a definition of consensus for purposes of their deliberations and also adopted a process for addressing divergent views.
- The Committee discussed approximately eighteen outstanding issues. For each of these issues, the Committee either agreed on a recommendation that should go in its report or, in cases where consensus was not possible, decided whether an objective discussion of the issue should be included in the main text of the report.
- The Committee agreed to take action, via conference calls, on several issues that it was unable to address or resolve during the meeting.
- The Committee adopted a process by which members could submit proposals on "new" issues for inclusion in the report (i.e., those that would not be able to be covered in the facilitated process).
- The Committee adopted a schedule for reviewing and then finalizing its report in preparation for the final meeting May 4-6 in Atlanta.
- The Committee received additional input on the TMDL Program and related water quality issues from States, local governments, EPA, and the general public.

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Participants:

Committee Members in Attendance:

Bob Adler
Fredric Andes
John Barrett
Nina Bell
J. Brad Burke
Phil Cummings
Cheryl Creson
Dale Givens
*Mike Haire
L.D. McMullen

William Nielsen
Robert Olszewski
Richard Parrish
John Roanhorse
Danita Rodibaugh
Melissa Samet
Linda Shead
Susan Sylvester
Lydia Taylor
Ed Wagner

. . * Mike Haire participated on behalf of Jane Nishida

Ex-Officio Committee Members in Attendance:

John Burt, Natural Resources Conservation Service
Geoff Grubbs, U.S. Environmental Protection Agency

Ex-Officio Committee Members Absent:

Art Bryant, U.S. Forest Service

EPA Representatives:

Donald J. Brady, Chief, Watershed Branch, AWPDP, OWOW
Jim Curtin, Attorney, Office of General Counsel
Hazel Groman, Designated Federal Official, AWPDP, OWOW
Jannell Young, EPA National Advisory Council for Environmental Policy and Technology
Bruce Zander, EPA National Expert on TMDLs, Region 8

Public Attendance:

Approximately 45 members of the public attended the meeting.

Facilitator:

Martha Prothro, Ross & Associates

Conference Support:

Ross & Associates and Tetra Tech, Inc.

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Wednesday, January 21, 1998

Welcome and Introductions:

Martha Prothro officially opened the meeting by welcoming the Committee, the State and EPA representatives in attendance, and the general public. Each Committee member, the Ex Officio members, and the EPA representatives then introduced themselves to the public.

EPA Update: New Developments Affecting the TMDL Program:

Geoff Grubbs, Ex-Officio Committee member and Director of EPA's Assessment and Watershed Protection Division, thanked the Committee members for all of their efforts and told them he was very satisfied with the progress the Committee has thus far made. He told the Committee he had reviewed the facilitators' early draft report and offered encouragement that the Committee would be able to finalize the report by May. He also underscored the importance of the Committee reaching consensus on as many issues as possible and reminded members that many details will necessarily be worked out later as EPA develops guidance and regulations. He confirmed that EPA's long-term plan, as explained to the Committee during the Portland meeting, is to have new guidance and regulations in place prior to the April 2000 listing cycle. For that to happen, the Agency will need the Committee's report by May 1998 so that the proposed rule-making process and development of guidance materials can begin. Mr. Grubbs said that some preliminary activities associated with the rule-making process are already under way.

Mr. Grubbs then briefly updated the Committee on several developments affecting the TMDL program since the Portland meeting in September:

- In October, Vice President Gore asked EPA and the U.S. Department of Agriculture to jointly take the lead on a Clean Water Initiative. The purpose of the Initiative is to "...develop a comprehensive Action Plan that builds on the...clean water successes over the past...years and addresses three major goals: enhanced protection from public health threats posed by water pollution; more effective control of polluted runoff; and promotion of water quality protection on a watershed basis."
- Mr. Grubbs explained various aspects of the Clean Water Initiative (e.g., the need for strengthening standards, the link between clean water and public health, and the need to improve water quality information and citizen right-to-know access). Mr. Grubbs also emphasized the continuing importance of the watershed approach, including the role that the TMDL Program will play in identifying impaired waters and allowing States to take the lead in implementing solutions.
- Mr. Grubbs also said that increased funding should be available in FY1999 for various EPA, U.S. Department of Agriculture, and U.S. Department of Interior clean water activities.

Responding to questions, Mr. Grubbs explained that there had been only one new notice of intent to sue (in Los Angeles) since the Committee's last meeting in September. A summary of the status of current litigation was made available to Committee members and to the public during the meeting.

Adoption of Consensus Definition and Divergent Views Approach:

Following Mr. Grubbs' remarks, Ms. Prothro summarized the Committee's activities since the Portland meeting and identified the goals for the Salt Lake City meeting. A facilitators' draft report had been reviewed by Committee members in December and, based on comments received, a revised draft report had been prepared by the facilitators for discussion at this meeting. (This facilitators' draft report, referred to within this meeting summary as the January 15 draft report, is available on EPA's TMDL Home Page at: <http://www.epa.gov/OWOW/tmdl/advisory.html>). Ms. Prothro explained the process the facilitators used to incorporate comments into this latest draft and also said that several members' comments had not yet been received.

The Committee next discussed how it would define consensus and how divergent views would

be addressed in the report. Initial discussions on this topic had occurred during the Committee's first meeting in Herndon, Virginia. As a basis for this discussion, the Committee reviewed a set of recommendations that had been recently proposed by the Framework Workgroup. These recommendations specified that any member could call for a vote on a specific recommendation on which discussion has been exhausted and consensus is in doubt. When a vote is called, members would be asked to indicate whether they agree, disagree, or (while not necessarily agreeing) "could live" with the recommendation. After some discussion, the Committee eventually agreed to this procedure and decided that a vote of 18 would constitute a supermajority (and consensus) for an issue.

The Committee also agreed that, in instances where agreement cannot be achieved, diverging views should be handled in the following manner:

- If an issue garners 10 or more votes but does not pass by a supermajority, it should be discussed in an appropriate section/chapter of the report.
- Minority reports should be allowed in two circumstances: (1) where a member voted against a recommendation that carried by a supermajority, and (2) where a member voted for a recommendation that did not pass and also was not accepted as an issue for discussion in the main report. Minority reports are to be limited to one report of three pages per issue (all members in the minority would work together on the report).

The Committee also agreed on a process for attempting to reach consensus on issues that it would not be able to fully discuss during plenary sessions or conference calls. Issues that are not addressed by the Committee or are not discussed in depth will only be listed in the final report.

Ranking of Outstanding Issues:

The Committee next discussed the ranking of the most significant outstanding issues that it would discuss during the meeting. As a basis for this discussion, the Committee reviewed a list of 42 substantive and 5 process issues that had been identified by the facilitators based on comments received. Members discussed the feasibility of addressing all of these issues given the limited time frame, the potential for extending the life of the Committee, and the best use of time between the end of the Salt Lake City meeting and the meeting in Atlanta. Geoff Grubbs confirmed that EPA needs the Committee's report by May so that it can move forward with the development of regulations and guidance; extending the life of the Committee is therefore not a viable option.

After these discussions, the Committee finalized the list of issues that it would attempt to discuss during the Salt Lake City meeting. These were as follows:

- Listing Cycle/Delisting
- Stakeholder Participation in TMDL Development
- Actions that might preclude the need for listing or TMDL development
- Tracking TMDLs
- Stakeholder Participation in TMDL Development
- Tracking TMDLs
- Effluent Trading
- Federal Lands
- Hierarchy Approach
- Stabilization Plans/Interim Constraints
- Legacy Problems
- Air Deposition
- Nonpoint Source-Only Waters
- Implementation Plan
- Candidate List
- Threatened Waters
- Pace of TMDL Development
- Instream Flows
- Priority Ranking
- Partial Approval
- Wet Weather TMDLs. .

Action on Outstanding Issues:

Listing Cycle/Delisting

The first issue discussed by the Committee was whether the report should include a recommendation on delisting waters (i.e., removing waters from the 303(d)(1) list) and, if so, what the recommendation should be (e.g., remove at time of TMDL development/approval or at the time of water quality attainment). A number of views were expressed on this issue, including the following:

- EPA's current policy is that States can delist a water once a TMDL is approved. The rationale for this is that there are other programs that can be used to track impaired waters (e.g., 305(b) or the Index of Watershed Indicators). The 303(d)(1) list has traditionally been viewed as a "to do" list.
- Under the Clean Air Act, airsheds are "delisted" when air quality is attained and an attainment plan is in place. For both administrative and policy reasons, impaired waters should be treated the same way.
- We need to be clear that the controls that are implemented as a result of a developed TMDL need to continue once a water is delisted.
- Several members suggested that being able to delist a water once a TMDL is approved provides an important incentive to stakeholders to participate in the TMDL development process (i.e., to avoid the stigma that is associated with being on a listed waterbody).
- Determining whether water quality standards have been attained is not always easy.

After discussing these and related issues, the Committee focused on several proposed options for the delisting issue. These options were:

A water should be delisted:

- 1) once a TMDL is approved;
- 2) once water quality standards are attained;
- 3) once water quality standards are attained and a maintenance plan is in place to ensure that controls will continue to be implemented;
- 4) the TMDL is implemented; or
- 5) after the TMDL is implemented or water quality standards are attained.

The Committee voted on these five options and, following some additional discussion, consensus was eventually reached on option 2 (a water should be delisted once water quality

standards are attained).

The Committee next discussed whether it should recommend that EPA extend the current two-year listing cycle to five years. Among the points that were made were the following:

- There is an urgent need to begin developing and implementing TMDLs. We will lose too much momentum if we move to a five-year listing cycle.
- We need to realize that the States' preparation of 305(b) and 303(d) reports are interrelated. One option to minimize redundancy would be to keep the current two-year cycle for 303(d), but stagger it so that 303(d) reports are not due in the same year as are 305(b) reports.

After some discussion the Committee agreed to recommend that EPA continue to utilize the two-year listing cycle. The Committee also agreed that EPA should provide recommendations to States with respect to adopting a formal process for listing and delisting in the interim between listing cycles.

Stakeholder Participation in TMDL Development

The Committee next discussed the extent to which stakeholders should be encouraged to participate in or lead TMDL development. Proposed language for this recommendation was already in the January 15 draft report. Members focused on the circumstances under which stakeholder-led TMDLs would be appropriate and whether significant stakeholder involvement should be constrained or managed. Among the points that were made were the following:

- State agencies need to be responsible for the public participation aspect of TMDL development. It is not appropriate to allow stakeholders to take the lead for this portion of a TMDL.
- Public participation needs to be incorporated into these type of TMDLs very early in the process. For example, one particular stakeholder should not be allowed to develop the entire TMDL and then present it to the public at the very end.
- The report should not include a specific recommendation to encourage the use of a neutral facilitator for stakeholder-developed TMDLs. This decision should be left up to the States.
- The current language specifying that results of all data collection must be shared with the State and other stakeholders is OK, except for instances where proprietary information is contained in the data (e.g., in the discharge reports from some industrial facilities).

Following these discussions the Committee agreed that the general tone of the existing language was acceptable and only needed some relatively minor revisions to be included in the final report.

Actions That Might Preclude the Need for Listing or TMDL Development

The next topic discussed by the Committee was how to address situations where, because of certain ongoing actions, it might not be necessary to list a water or to develop a TMDL. More specifically, the Committee discussed whether to list "expected-to-meet" waters, or those that are impaired but that will meet water quality standards after the implementation of existing control requirements. The following points were made on this topic:

- Several members strongly disagreed with not listing these waters because of the general principle that all impaired waters should be listed. The Committee needs to realize that some States will not follow up on these waters if they are not on the

303(d)(1) list.

- There are going to be many instances where revised permits for point sources will make it fairly certain that water quality will be attained. There is no need to list these segments and not listing them provides a good incentive to industry to be proactive. The issue of whether water quality standards will be attained when there are nonpoint sources, however, is not as straightforward.
- Another dimension to the "expected-to-meet" issue is the question of how long before a water becomes listed. For example, one proposal is to not list these waters until the next listing cycle (i.e., wait two years) and to list them then if standards are still being violated.

The Committee also discussed whether or not a TMDL "equivalent" could obviate the need for developing a TMDL after a water has been listed (A TMDL "equivalent" had been defined as a program or plan other than a TMDL that meets all procedural and substantive requirements of a TMDL.) The language in the January 15 draft of the report allow States to not list these waters. Among the issues that were raised were:

- TMDL equivalents are an important issue to the paper industry. Companies want to be recognized for the good work they are doing, such as with Habitat Conservation Plans and efforts related to forest practices acts. The final report needs stronger language with respect to this issue and should include several comprehensive examples.
- Some actions that are being touted as TMDL "equivalents" are not directed toward water quality and do not include adequate adaptive management components (e.g., they do not provide for follow-up monitoring).
- There was some disagreement among members concerning the extent to which "equivalents" would need to be revised so that they could be submitted as a formal TMDL. Some members pointed out that there are specific regulatory components that need to be included in a TMDL (e.g., margin of safety and load allocation/wasteload allocation requirements). Members also suggested that States could use the "equivalent" as a starting point for the technical portion of a TMDL and that these other components could be added later.

The Committee was unable to reach consensus on the expected-to-meet issue. It was agreed, however, that the various views on this issue would be discussed in the final report.

The Committee tabled the discussion on TMDL equivalents until an "ad hoc" small group could meet to put together a new proposal. This proposal was presented to and accepted by the Committee on Friday morning and reads as follows:

Components of an existing program, including analyses, pollution controls, and/or management measures, or modifications of such components, may be approved as or incorporated into a TMDL if the State shows, and EPA finds, that the State submittal meets all substantive approval requirements of a TMDL (including appropriate alternative approval options identified in the Hierarchy Approach (Appendix H)) and the State submittal was adopted after adequate opportunities for public participation.

Tracking TMDLs

The Committee next addressed the question of whether it should recommend a specific, consistent approach for States/EPA to track TMDL development and implementation. Many members stated that they had assumed this would be a routine activity of State and EPA programs and that there is no need for the Committee to get into specific details in the report. After a short discussion the Committee agreed that some language should be added to the

report stating that the processes States use to track TMDL development activities should be reasonably consistent from State to State.

Federal Lands

The Committee next discussed whether its final report should include specific recommendations on the issue of developing TMDLs on federally-owned lands. The two major questions are (1) who should develop TMDLs for waters that are primarily or entirely on federal lands?, and (2) what is the role of federal land managers in TMDL development and implementation? The following points were made on this issue:

- It will take the commitment of all federal agencies to make this happen. EPA will not be able to develop these TMDLs entirely on its own.
- EPA should take the lead in developing TMDLs for these types of waters because there is a need for better federal coordination.
- States need to try to develop these TMDLs themselves, but should ask for assistance when it is difficult to coordinate with the applicable federal agencies.
- Federal land managers need flexibility when implementing controls that are planned as a result of a TMDL because of the nature of nonpoint source runoff and because of the many competing uses of federal lands. Some of the report's current language, especially with respect to not issuing any permits unless they comply with the TMDL, is too restrictive.
- There is a Federal executive order 12875 that directs federal agencies to work more closely with Tribes on a variety of issues. For the most part this order has not been followed, which raises questions about how the Committee should address this issue in its report.

The Committee was eventually able to agree on the general recommendation that States have the initial responsibility for developing TMDLs on federal lands, but they should be encouraged to ask EPA for assistance up to and including TMDL development where cooperation from federal agencies is necessary. This language was to be added to the report, along with a reference to the Tribal executive order mentioned above.

With respect to the role of federal land managers in implementing a TMDL, the Committee adopted some new language to replace that found in the January 15 draft of the report. The new language is as follows:

Federal land managers have the responsibility to assure that (waste)load allocations over which they have oversight or authority are met. Federal agencies must develop plans, including specific milestones, that lay out all steps the agency will take, including reopening appropriate permits and licenses, as necessary to assure (waste)load allocations will be met.

Note: Some of the discussion on the federal lands issue took place on Thursday morning.

Public Comment Period:

Martha Prothro opened the public comment period by welcoming everyone and explaining the role of the FACA Committee in providing recommendations to EPA on how to improve the TMDL Program. She explained that, although a broad range of backgrounds and perspectives are represented on the Committee, it is not all-inclusive. The public sessions that have been held at previous meetings have been an important means by which the Committee has gained valuable insight from others.

The first public comment was made by **Lewis Britt**, representing the **National Cattlemen's Beef Association**. Mr. Britt had spoken to the Committee during its Milwaukee meeting and reiterated the need for good science when developing TMDLs, especially when nonpoint sources are involved. He noted that many States do not have the resources to adequately monitor their waters and that this is apparent in their 305(b) reports. He also told the Committee that the concept of cost:benefit analyses should be part of TMDLs, that USDA needs to provide more technical assistance to farmers, and that local problems demand local solutions.

Dr. Charles Cabbage from the **Michigan Department of Agriculture** spoke to the Committee about a variety of non-TMDL activities taking place in Michigan that address water quality. He mentioned a trading proposal that had substantial cost savings and also pointed out that there are more resources out there than one might first realize for addressing water quality problems (e.g., the use of volunteer monitoring, grants from private organizations, etc.).

Fred Reimufrr from **Trout Unlimited** told the Committee that the Clean Water Act has been very useful for addressing certain types of problems, but is not well suited to address others (such as those caused by sediments, salinity, or low flows). Mr. Reimufrr emphasized this fact by talking about several examples in Utah, including the use of total containment sewerage areas and the impact that a reservoir has had on a fishery.

David Beckman addressed the Committee on behalf of the **National Resources Defense Council** and said that he agreed with the focus on implementation that is found in the Committee's draft report. He also said he was concerned, however, that the report contains too many exceptions to stringent TMDL development and identified several issues which the report leaves too vague (e.g., the use of surrogate measures and the hierarchy approach).

Peter Maier spoke to the Committee on behalf of the **Intermountain Water Alliance**. He told the Committee about his experience working on water quality issues in the Jordan River and asked members to request EPA to demand complete and proper testing for its point source water pollution program before any TMDLs are established. He explained the shortcomings of current secondary treatment requirements and his experience in trying to get EPA to change its testing procedures and treatment with respect to plants on the Jordan River.

Bruce Pendery told the Committee that it is crucial that TMDLs address water quality problems that are due to nonpoint sources. He explained that the three major water quality problems that are associated with overgrazing are bacteria, sedimentation, and temperature and also briefly discussed some best management measures that the Bureau of Land Management (BLM) adopted in 1995. He said that the development of TMDLs will help BLM implement these management measures.

Mel Vargas from the **Texas Natural Resources Conservation Commission** told members that he has been following their activities closely and offered several comments on specific issues. He said that he agreed that tracking of individual TMDLs will be important to EPA but that States will not have the necessary manpower to do this. He also said he was very concerned about the discussion on the implications of being listed. Mr. Vargas also said that Texas would be looking to EPA to help with TMDLs on federal lands, that strict QA/QC rules need to be adopted for data that are used for listing decisions, and that the rules for ranking TMDLs need to be very flexible at the State level. .

Thursday, January 22, 1998

Action on Outstanding Issues, *continued*:

Hierarchy Approach

Although the Committee had previously reached general consensus on the use of the hierarchy approach in developing TMDLs, several specific issues still needed to be addressed. After brief discussions, the Committee agreed that the wording on minimum data requirements in the January 15 draft report was acceptable and that more detailed language on this topic was unnecessary. Members also discussed the need for EPA regulations or guidance to be very clear that there will be a minimum level of follow-up monitoring that is necessary when some of the first components of TMDL development cannot be rigorously quantified. Several specific wordsmithing suggestions were also proposed by members (e.g., on the use of surrogates).

Stabilization Plans/Interim Constraints

The Committee next discussed the "consequences of being listed" and the types of interim constraints that might apply between listing and TMDL development. Several questions were addressed, including the following:

- Under what, if any, circumstances should new or increased discharges of the problem pollutant be allowed during the interim period between listing and TMDL development?
- Should there be a baseline set of constraints and what should they be?
- Should the constraints be greater for certain waters (e.g., those where human health or endangered species threats are present)?
- If the Committee's recommendation includes encouraging/allowing watershed characterization and stabilization plans, should the Committee recommend the timing of State action to produce characterizations for listed waters and the appropriate approach for developing the stabilization plan (e.g., roles of stakeholders, the State, EPA, etc.)?

The Committee spent considerable time discussing these questions. The following were among the points that were made by individual members:

- The rationale behind these interim constraints is that impaired waters should not be allowed to continue to degrade. The regulations that already exist for point sources in these situations need to be consistently applied and state or local regulations for nonpoint sources, where they exist, should also be consistently applied.
- There are very important examples where allowing an increased discharge from a facility will have net environmental benefits (e.g., where it will promote redevelopment of brownfields). The stabilization plans that the Committee is proposing should encourage this type of flexibility.
- The watershed characterizations that the Committee is discussing should not be mandatory; the increased workload on State agencies will be too high. The characterizations should be 2-3 page documents that describe the impairment and the available data and set the stage for early stakeholder involvement.
- The Committee needs to be clear that these stabilization plans and characterizations would only apply to the listed segment; some of the discussion makes it sound as though the plans would apply to the entire watershed.
- The stabilization plans should primarily be developed by the States, although stakeholder involvement should be encouraged. One option would be to provide EPA the option to accept or not accept a stabilization plan (as opposed to a formal approval/disapproval).
- Several members suggested that characterizations and stabilization plans should initially be mandatory and then could later be made optional for States that prove they can do them well. Other members felt strongly that they should not be mandatory.
- It is very difficult to envision how the discussion of interim constraints (where the

regulatory controls exist) will be addressed for nonpoint sources. Loads simply cannot be stabilized from nonpoint sources because of their very nature (i.e., ever-changing hydrologic conditions).

The Committee was eventually able to agree that States should be involved early in the development of stabilization plans and also came up with a proposed flow chart for how this entire process would work. The steps identified in this flow chart are described below:

1. State places water not meeting water quality standards on a 303(d)(1) list.
2. State applies the regulatory point source prohibition on new/increased discharges that will cause or contribute to a water quality standard violation.
3. Watershed Characterization (mandatory): State summarizes the status and health of the watershed, identifies significant point and nonpoint sources contributing to the impairment, and notes any data gaps.
4. Stabilization Plan Step 1 (mandatory): State identifies and implements existing State/federal authorities that will prevent an increase in water quality degradation. No new authorities are created.
5. Stabilization Plan Step 2 (optional): State (working with stakeholders) identifies mechanisms that might allow for exceptions from the point source prohibition (or other applicable interim constraints) upon demonstration of net progress in water quality. (The Committee agreed to consider other possible exceptions that may not lead to net progress in water quality at a later date.)
6. Attainment Plan (optional): States (and possibly stakeholders) may explore and implement additional measures that would lead to or help obtain restoration of water quality. This step is not the same as implementing a TMDL, but if water quality is restored, the water could be removed from the 303(d)(1) list.

Points 1 and 2 reflect current requirements. Points 3 and 4, above, would become new regulatory requirements. Steps 5 and 6 are permissive and may be advanced at the discretion of the State (and/or stakeholders).

Legacy Problems

The Committee next discussed the issue of legacy problems, originally defined as those impairments associated with activities which occurred decades ago and which still cause or contribute to nonattainment of water quality standards. Committee members were generally in favor of most of the recommendations in the January 15 draft of the report, but suggested several language revisions. Members also felt strongly that legacy problems needed to either be more clearly defined or perhaps listed (i.e., legacy problems are: abandoned mines, contaminated bottom sediments, etc.). Several proposals were made, and the Committee eventually agreed that some new language should be added to the report to convey that legacy problems are those associated with "past activities that no longer continue and which cause and contribute to an impairment."

Air Deposition

The Committee next discussed the issue of whether waters impaired by (or significantly impaired by) atmospheric sources should continue to be listed and, if so, how TMDLs should be developed for them. A subgroup of the Committee that had been formed to discuss this issue gave members a paper that summarized their discussion points. The following issues were raised during discussion:

- Some members felt that these types of waters should be listed because of the need to draw attention to them; other members disagreed because of the implications that arise from being listed.

- Other members felt that the state of the science simply isn't advanced enough to properly address impairments due to atmospheric sources. This fact limits the extent to which the Committee can make any useful recommendations.
- Several members suggested that the Committee should recommend that EPA use Clean Air Act authorities to address these problems.
- A proposal was made that one TMDL could potentially be developed to address an entire class of waters impaired by remote atmospheric sources (e.g., Northern lakes impaired by mercury).

Following this discussion the Committee voted on four options for listing waters impaired by atmospheric sources:

- 1) List all impaired waters.
- 2) List all waters except waters impaired **only** by remote atmospheric sources.
- 3) Don't list a water if air deposition is predominant.
- 4) List all impaired waters, but develop a single TMDL for a class of waters impaired by the same remote source.

The Committee was unable to reach consensus on any of these options, but decided that this issue should be discussed in the report. The Committee agreed that the facilitators should use the discussion paper as a basis for developing new language for the report.

Public Comment Period:

Glenn Eurick spoke to the Committee on behalf of the **Utah Mining Association** and Barrick Resources, a mining company with gold mines in Utah and around the world. Mr. Eurick said he had reviewed a draft of the Committee's report and agreed that States cannot focus only on 303(d)(1) waters. He also told members that waters should not be listed unless good water quality data are available and that it was important to not disproportionately allocate loads to point sources.

Don Ostler from the **Utah Division of Water Quality** thanked the Committee for its efforts and said that many people are anxiously awaiting the final report. Mr. Ostler said that he doesn't view TMDLs as anything new because Utah has been developing them for more than twenty years and has a lot of experience to share. He also said that resources, at the local, state and federal levels, simply are not available to do the type of work that is needed, that States and EPA need to form a better partnership, and that it is important for States to retain as much flexibility as possible in implementing their programs.

Deb Atwood from the **National Pork Producers Council** made several recommendations to the Committee on its draft report. She said that the report should include an explanation of the interplay between the various legislative programs, that it should include a statutory definition of 303(d)(3) waters, and that it should carefully explain the Committee's position on the issue of listing nonpoint source-only waters.

Wayne Martinson addressed the Committee on behalf of the **Utah chapter of the National Audubon Society** and said that a better name for the TMDL Program might be the Water Quality Attainment Program. He also said that he agreed with many of the recommendations included in the Committee's draft report, especially the importance of State and Tribal monitoring and the need to move forward in the face of uncertainty.

Darren Brandt from the **Idaho Department of Environmental Quality** shared his experience on developing a TMDL for the Mid-Snake River over the past five years. He said that the implementation of a well-developed nutrient management plan had been delayed for several years because of the legal restrictions associated with submitting it as a TMDL. He also

said that many States lists are going to continue to grow and that some of the time frames that have been proposed by the Committee are unrealistic.

Amy Barry from the **Southern Utah Wilderness Alliance** addressed the Committee and said that her organization represents 25,000 members who raft, camp, and hike in Utah. She said that many waters in Utah continue to be impaired and in some instances pose health risks to recreationists. She said that often this is due to cattle grazing and that TMDLs can be an important tool used to fix these problems.

Ivan Webber spoke to the Committee on behalf of the **Friends of Great Salt Lake** and said that, although he was somewhat unfamiliar with TMDLs, he was encouraged by what he had heard during the meeting. He said that it is important to find ways to leverage resources that can be used to obtain better science and water quality data and also shared some of the unique challenges that he faces in trying to protect Great Salt Lake. Mr. Webber also emphasized the importance of educating the public, especially the corporate community, about water quality problems and what can be done about them. .

Friday, January 23, 1998

Action on Outstanding Issues, *continued*:

Nonpoint Source-Only Waters

The Committee next talked about whether discussion of the nonpoint source-only waters issue, which the Committee has not reached consensus on, should occur in the main report or would be more appropriate in an appendix. (The nonpoint source-only waters issue refers to the question of whether section 303(d)(1) applies to waters that are impaired by nonpoint source discharge only.) After a brief discussion the Committee decided that an objective discussion of the opposing views on this topic should be included in the main report. Members also offered several suggestions as to whether other topics should be addressed in this section of the report and suggested that the title of the section might need to be changed.

The Committee also briefly discussed, but did not reach consensus on, the related question of, if section 303(d)(1) does apply to nonpoint source-only waters, would a result of such an interpretation be that EPA's approval of a TMDL implementation plan would give EPA the ability to direct a State's nonpoint source program. The following points were made on this issue:

- The experience in Oregon has been that EPA approval of a TMDL has not affected the State's nonpoint source program authority.
- Several members said that they did not understand other members' concern regarding this issue. The Committee has repeatedly said that no new nonpoint source control authorities are created as a result of the TMDL Program.
- The concern about this issue is not so much EPA approval of a TMDL, but how EPA disapproval of a State's TMDL and promulgation of its own TMDL might affect state nonpoint source programs. Another concern is the uncertainty associated with what would happen when nonpoint source controls that are part of an approved TMDL do not have their desired effect.

Note: Some of the discussion on the nonpoint source-only issue occurred on Thursday evening.

Implementation Plan

The January 15 draft of the report indicated that the Committee could not agree on whether to require implementation plans under section 303(d) or 303(e) (i.e., as part of an approvable TMDL or as part of the State's continuing planning process (CPP)). The draft report also provided that control actions in an implementation plan may address categories of sources rather than each individual source. The Committee discussed these two issues and the following points were made:

- Several options were proposed on the issue of whether implementation plans should be required under section 303(d) or 303(e). These included (1) requiring that plans accompany the TMDL, but that the plans themselves would officially be approved under the CPP or, (2) approval of the TMDL would simply require the existence of an implementation plan.
- Sources need to be grouped when allocating loads and preparing the implementation plan. In some instances only broad groupings can be made initially and then more specific sources can be identified later.
- Several members felt strongly that the names of individual landowners should not be identified in the TMDL. This will make it look too much like a permit.

The Committee eventually decided that it would be unable to reach consensus on whether implementation plans should be required under section 303(d) or 303(e), but decided that an objective discussion of the topic should be included in the report. The Committee agreed that States should have flexibility in categorizing loads and also agreed that, if EPA decides to approve implementation plans under section 303(e), the 303(e) regulations should include the Committee's recommendations on the components of an approvable implementation plan.

Candidate List

The Committee next discussed whether it should recommend that EPA establish a non-303(d) list of waters that **may** be impaired, but for which data are inadequate to make a definitive determination. A placeholder for this recommendation was included in the January 15 draft of the report. Among the issues raised by members about this recommendation were the following:

- Several members were concerned that creating an entirely new list would unnecessarily add to the workload of State staff.
- Some members felt that such a candidate list would balance concerns by the regulated community that waters are often listed based on inadequate data. The candidate list would allow the regulated community to collect its own data to prove that a water need not be listed.
- At least one member agreed with the concept of the candidate list but felt that the grace period for staying on the candidate list should be longer. (A component of the candidate list proposal specified that a water would be "defaulted" to the section 303(d)(1) list after two years.)
- Some members were concerned that States would use the candidate list to shorten the section 303(d)(1) list, while others were concerned that too many waters could eventually be placed on the 303(d)(1) list because of the default mechanism.

The Committee eventually decided that it would be unable to reach consensus on recommending the use of a candidate list, but that a discussion of the issue should be included in the main report. It did agree, however, to encourage States to (1) identify waters for which some data indicate impairment and to (2) monitor these waters.

Threatened Waters

The Committee next revisited the issue of whether States should list their threatened waters

(i.e., those waters that currently meet water quality standards but are expected to exceed water quality standards within two years). The Committee had previously discussed this issue at great length and had been unable to reach consensus; members therefore spent only a brief time discussing it during the meeting. The three general options that the Committee considered were:

- 1) List threatened waters under section 303(d)(1).
- 2) List threatened waters on another (non-303(d)(1) list). Waters on this list would require tailored interim constraints on and heightened scrutiny of point source permits.
- 3) Don't list threatened waters.

Members discussed these options and also agreed that a tighter definition of what constitutes a threatened water would be needed if consensus was to be reached. A small group was established to make another attempt at refining the options being considered.

Pace of TMDL Development

The January 15 report contained a recommendation that TMDLs should be completed within 8 to 15 years of listing. Two years were added to EPA's current 8 to 13 year policy in light of the Committee's recommendation that TMDL submittals should include implementation plans. The Committee discussed whether this was still its position and, after some deliberation, agreed to affirm the 15 year time frame.

The Committee also agreed that language should be added to the report conveying the idea that States' schedules should display "proportionate effort" with respect to the pace of TMDL development. This clarification was added because of the concern that some States might delay developing their TMDLs until very late in the 15 year time frame. The Committee also confirmed that high priority TMDLs should be substantially completed within five years, although members were not able to agree on which types of waters should be considered high priority (e.g., those with threatened and endangered species issues, those where industrial facilities cannot expand until the TMDL is developed). The Committee agreed to continue to explore linkages between the pace, priority ranking, scheduling, and partial approval issues.

Plan for Resolving Any Remaining Outstanding Issues Prior to the Atlanta Meeting:

Following the discussion of the issues, the Committee discussed its plans for resolving outstanding issues and finalizing its report for the Atlanta meeting. Members reviewed and confirmed the decisions that the Committee had made on the issues discussed during the meeting and also decided which issues would still need to be discussed during future conference calls. Calls were planned to address the following issues: Threatened Waters, Pace/Scheduling/Partial Approval, Instream Flows, and Allocation. Committee members also decided on a process by which members could submit proposals on "new" issues (those that would not be covered in the facilitated process). These proposals would require the support of fourteen or more members by February 24 to be considered for inclusion in a later draft of the report.

The Committee and the facilitators also decided that the next draft of the report would be a Committee draft (in contrast to the drafts to date, which have been facilitators' drafts) and would be distributed on March 2. This draft of the report will be open to public comment. The schedule for finalizing this draft of the report would then be as follows:

- 3/2: Draft Committee report distributed to members and made available for public distribution.
- 3/20: Public comment on 3/2 draft report due to facilitators for distribution to members.
- 3/21: Public comment distributed by facilitators to members for them to consider in reviewing/commenting on the 3/2 draft.
- 4/1: Member comments on 3/2 draft report and any additional Proposals on "New" Issues due to facilitators.
- 4/2: Member comments and proposals distributed to members by the facilitators.
- 4/24: Final draft report distributed to members.
- 5/4-6: Final Committee Meeting in Atlanta, GA.
- 5/15: Final report circulated for member signature.
- 6/3: Final report submitted to EPA Administrator.

The Committee also decided that any "stoppers" (i.e., concerns with the March 2 draft that are so serious that members could not agree to sign the report if a change is not made) should be identified by April 1. Members then decided that the goals of the Atlanta meeting would be to resolve any "stopper issues", wrap up on loose ends and, to the extent possible, wordsmithing concerns, and prepare for the presentation to EPA. EPA and the Committee also agreed that one public comment session would be held on the evening of May 4..

Approval of Meeting Summary:

This summary of the fifth meeting of the Federal Advisory Committee on Total Maximum Daily Loads was reviewed and approved by the full Committee at the May 4-6 meeting in Atlanta, Georgia.

Hazel Groman
Designated Federal Official
Date May 29, 1998
